

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

JOHN PAUL COOPER (02)
WALTER NEIL SIMMONS (03)
WILLIAM F. ELDER-QUINTANA (04)
JEFFRY DOBBS COCKERELL (07)
STEVEN BERNARD KUPER (08)
MICHAEL JOHN KISELAK (12)

No. 3:16-CR-60-M

**GOVERNMENT’S OBJECTIONS TO EXHIBITS DEFENDANTS
INTEND TO INTRODUCE THROUGH SPECIAL AGENT MCCARDEL**

The government files these written objections to the lists of exhibits that the defendants have indicated they intend to introduce through Special Agent McCardel. Now that the government has finished SA McCardel’s direct examination (subject to a continuation of his direct for Exhibits 350 and 356) the list of objections has been updated to include objections to exhibits that would take SA McCardel’s cross-examination beyond the scope of his direct examination.¹

The government has offered to stipulate to the authenticity of all of the emails obtained through search warrants in this case, so there is no need to authenticate them through SA McCardel. And while the government may introduce the defendants’ statements through SA McCardel as non-hearsay statements and/or through exceptions to

¹ SA McCardel has not been subpoenaed by any defendant and was not listed as a witness on any of the defense witness lists.

the hearsay rule, the defendants cannot offer their own statements through SA McCardel because they are hearsay and not statements of their opponent. *United States v. Sanjar*, 876 F.3d 725, 739 (5th Cir. 2017) (“When offered by the government, a defendant’s out-of-court statements are those of a party opponent and thus not hearsay. Fed. R. Evid. 801(d)(2). When offered by the defense, however, such statements are hearsay (the defendant may, of course, reiterate the out-of-court statements on the stand if he chooses to testify.”), *cert. denied sub nom. Main v. United States*, 138 S. Ct. 1577 (2018).

Exhibit	Objection
Cooper 077	(Moot – admitted)
Cooper 078	(Moot – admitted)
Cooper 091	Hearsay, beyond scope of direct
Cooper 107	Hearsay (multiple levels)
Cooper 138	No objection
Cooper 188	Hearsay
Cooper 209	No objection
Cooper 247	Hearsay
Cooper 257	(Moot – admitted)
Cooper 318	Hearsay, beyond scope of direct
Cooper 346	Hearsay, relevance, beyond scope of direct
Cooper 347	No objection
Cooper 348	Hearsay, relevance, 403 confusion of the issues, no privilege waiver provided for these attorneys, beyond the scope of direct
Cooper 349	Hearsay, relevance, 403 confusion of the issues, no privilege waiver provided for these attorneys, beyond the scope of direct
Cooper 350	No objection
Cooper 351	Hearsay, beyond the scope of direct
Cooper 352	Hearsay, beyond the scope of direct

Exhibit	Objection
Cooper 353	Beyond the scope of direct
Cooper 358	No objection
Cooper 359	Was not provided to the government until 8:11 p.m. on 11/18/2019, authenticity, lack of foundation, hearsay
Cooper 360	No objection
Cooper 361	No objection
Simmons 031	Hearsay, lack of foundation, beyond the scope of direct
Simmons 035	Hearsay, relevance, beyond the scope of direct
Simmons 036	Hearsay, relevance, beyond the scope of direct
Simmons 047	Hearsay, relevance, previously denied admission through Cesario, beyond the scope of direct
Simmons 067	Hearsay, beyond the scope of direct
Simmons 069	Hearsay (multiple levels), relevance/403, beyond the scope of direct
Simmons 080	Hearsay, relevance, beyond the scope of direct
Simmons 127	Hearsay, beyond the scope of direct
Simmons 142	Hearsay, no privilege waiver provided for Jeff Cohen, therefore it is improper to use this memo to establish an advice of counsel defense
Simmons 143	Hearsay, beyond the scope of direct
Simmons 146	Hearsay
Simmons 148	Hearsay
Simmons 149	Hearsay
Simmons 212	Hearsay, beyond the scope of direct
Simmons 216	No objection
Simmons 278	No objection
Simmons 295	Relevance/403, authenticity, lack of foundation, beyond the scope of direct

Exhibit	Objection
Simmons 296	Relevance, authenticity, lack of personal knowledge, , beyond the scope of direct
Simmons 317	Hearsay, relevance/403, beyond the scope of direct
Simmons 328	Hearsay, beyond the scope of direct
Simmons 331	Hearsay, authenticity, lack of foundation, beyond the scope of direct
Simmons 341	No objection
Simmons 350	Hearsay
Simmons 363	No objection, already admitted (maybe from another defendant's list)
Simmons 381	Hearsay, beyond the scope of direct
Simmons 421	Hearsay
Simmons 437	Hearsay
Simmons 484	Hearsay
Simmons 491	Hearsay
Simmons 540	Hearsay
Simmons 545	Hearsay, relevance, beyond the scope of direct
Simmons 568	Hearsay
Simmons 572	Hearsay, relevance/403, beyond the scope of direct
Simmons 612	Hearsay
Simmons 688	Hearsay, beyond the scope of direct
Simmons 786	Hearsay, authenticity, beyond the scope of direct
Simmons 829	Hearsay
Simmons 830	Hearsay
Simmons 831	Hearsay, relevance, beyond the scope of direct
Simmons 846	No objection (already in evidence as Government's 360)
Simmons 849	Hearsay, relevance, beyond the scope of direct

Exhibit	Objection
Simmons 940	Hearsay, relevance, lack of foundation, authenticity, no privilege waiver provided as to this law firm, beyond the scope of direct
Simmons 947	Hearsay, relevance, lack of foundation, authenticity, beyond the scope of direct
Simmons 949	Hearsay, relevance, lack of foundation, authenticity, beyond the scope of direct
Simmons 950	Hearsay, relevance, lack of foundation, authenticity, beyond the scope of direct
Simmons 951	Hearsay, relevance, lack of foundation, authenticity, no privilege waiver provided as to this law firm, beyond the scope of direct
Simmons 968	Hearsay, relevance, lack of foundation, authenticity, beyond the scope of direct
Elder 006	Hearsay, makes defense counsel a fact witness which would require disqualification and potentially a new trial, relevance, confusion of the issues, lack of foundation, authenticity, beyond the scope of direct
Elder 007	Authenticity, lack of foundation, relevance/403, beyond the scope of direct
Elder 008	Hearsay, beyond the scope of direct
Elder 021	No objection
Elder 022	Hearsay
Elder 023	Hearsay
Elder 024	No objection (same as Gov. 266)
Elder 025	Hearsay
Elder 026	Hearsay
Elder 031	Hearsay
Elder 036	Hearsay
Elder 038	Hearsay, relevance, beyond the scope of direct
Kuper 049	No objection
Kuper 050	No objection

Exhibit	Objection
Kuper 051	No objection
Kuper 072	Hearsay, authenticity, beyond the scope of direct
Kuper 075	No objection
Kuper 181	Hearsay
Kuper 193	Hearsay, 403 – this is being offered by Kuper to support an argument that “even the Texas AG thought Cooper was a Dandy employee.” This is misleading and confusing, as this is a form letter triggered by the filing of payroll taxes, which we do not dispute were paid, beyond the scope of direct
Kuper 194	Hearsay
Kuper 204	No objection
Kuper 205	No objection
Kuper 208	No objection
Kuper 209	No objection
Kuper 245	Already admitted as Kiselak 107 or 109
Kuper 246	Already admitted as Kiselak 107 or 109
Kuper 302	Hearsay
Kuper 311	Hearsay
Kuper 312	Hearsay (this is the attachment to 311)
Kuper 321	Already admitted as Kiselak 107 or 109
Kuper 322	Already admitted as Kiselak 107 or 109
Kuper 324	Already admitted as Kiselak 107 or 109
Kuper 339	Already admitted as Kiselak 107 or 109
Kiselak 017	(Moot – Admitted)
Kiselak 018	(Moot – Admitted)
Kiselak 066	Hearsay
Kiselak 070	No objection
Kiselak 071	Hearsay
Kiselak 076	Hearsay

Exhibit	Objection
Kiselak 077	Hearsay
Kiselak 078	Hearsay
Kiselak 079	Hearsay
Kiselak 080	Hearsay
Kiselak 081	Hearsay
Kiselak 082	Hearsay
Kiselak 083	Hearsay
Kiselak 085	Hearsay
Kiselak 086	Hearsay
Kiselak 087	Hearsay
Kiselak 090	No objection (same as Gov. 198)
Kiselak 092	Hearsay
Kiselak 093	Hearsay
Kiselak 094	Hearsay
Kiselak 095	Hearsay
Kiselak 096	Hearsay
Kiselak 097	Hearsay
Kiselak 099	Hearsay
Kiselak 100	Hearsay
Kiselak 101	Hearsay

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2019, I electronically filed the foregoing document with the clerk for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to counsel of record for all defendants.

/s/ Douglas B. Brasher
DOUGLAS B. BRASHER